

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHAEL PHILIP KAUFMAN,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

No. 16-CV-2880-AKH

STIPULATION OF THE PARTIES

**FOR FILING AND THE COURT ONLY:**

In an effort to streamline the presentation of evidence at trial, the parties have agreed to certain stipulations as follows, relating to certain undisputed facts to be read to the jury.

First, for purposes of this case, Plaintiff Michael Kaufman and Defendant Microsoft stipulate and agree that the best evidence of usage data available shows there were 770 unique monthly users creating Dynamic Data sites (i.e., users are only unique within the month) in the United States between August 2017--July 2018. The parties further stipulate and agree that the parties would have entered into a lump-sum license agreement at the February 2011 hypothetical negotiation. In light of this stipulation, Mr. Kaufman agrees that there will be no suggestion, reference, or argument related to spoliation issues before the jury.

Second, to complete the record concerning the file history of the '981 patent, the parties have agreed to admit certain facts and exhibits as outlined below.

**TO BE READ TO THE JURY:**

It is hereby stipulated and agreed by and between the plaintiff Michael Philip Kaufman and the defendant Microsoft that:


- (1) For purposes of this case, the best evidence of usage data available shows there were 770 unique monthly users creating Dynamic Data sites (i.e., users are only unique within the month) in the United States between August 2017--July 2018.

- (2) The parties would have entered into a lump-sum license agreement at the February 2011 hypothetical negotiation.
- (3) Microsoft Access 2000 was sold in the U.S. prior to the original patent application Mr. Kaufman filed concerning the asserted '981 patent.
- (4) The original patent application Mr. Kaufman filed concerning the asserted patent was United States patent application 09/703,267, filed on October 31, 2000.
- (5) Application number 09/703,267 is marked as Exhibit 6. The parties jointly offer Exhibit 6 in evidence and ask the Court to receive it in evidence.
- (6) Application number 09/703,267 did not say the word "delete" and it did not contain the following language found in the asserted '981 patent at column 5, line 63 through column 6, line 3:

Note that, although not shown in the reference implementation, DELETE capability is also readily incorporated—as either (or both) true record-removal from the under lying table, and/or record "flagging" for UI suppression (with continued underlying-table record retention)—simply by adding (according to the user's access rights, potentially) another pushbutton within the Edit-mode display.

- (7) The above language found in the asserted '981 patent at column 5, line 63 through column 6, line 3 was added on October 31, 2001, when Mr. Kaufman filed PCT/US01/42867.
- (8) PCT/US01/42867 further included a claim that included "removing . . . data records."
- (9) PCT/US01/42867 is marked as Exhibit 4. The parties jointly offer Exhibit 4 in evidence and ask the Court to receive it in evidence.
- (10) Mr. Kaufman asserts that PCT/US01/42867 is a Continuation-in-Part of United States patent application 10/428,209, which is in evidence as Exhibit EN.

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*Attorneys for Defendant Microsoft Corporation*

**IT IS ORDERED** that the foregoing Agreement is approved.

Dated:

BY THE COURT:

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Judge Alvin K. Hellerstein  
United States District Judge